

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON  
PORTLAND DIVISION

MICHAEL A. WEBBER,

Petitioner,

No. 03:09-cv-00170-AC

v.

D. MILLS,

ORDER

Respondent.

HERNANDEZ, District Judge:

Magistrate Judge Acosta issued a Findings and Recommendation (#87) on September 14, 2012, in which he recommends the Court deny petitioner's Second Amended Petition for Writ of Habeas Corpus.

Petitioner has timely filed objections to the Findings and Recommendation. The matter is now before me pursuant to 28 U.S.C. § 636(b)(1) and Federal Rule of Civil Procedure 72(b).

When any party objects to any portion of the Magistrate Judge's Findings and

Recommendation, the district court must make a *de novo* determination of that portion of the Magistrate Judge's report. 28 U.S.C. § 636(b)(1); Dawson v. Marshall, 561 F.3d 930, 932 (9th Cir. 2009); United States v. Reyna-Tapia, 328 F.3d 1114, 1121 (9th Cir. 2003) (en banc).

I have carefully considered petitioner's objections and conclude that there is no basis to modify the Findings and Recommendation. I have also reviewed the pertinent portions of the record *de novo* and find no other errors in the Magistrate Judge's Findings and Recommendation.

On the same day Magistrate Judge Acosta issued the Findings and Recommendation regarding petitioner's habeas petition, he also issued an Order [86] denying petitioner's motion for order permitting juror interview [24]. Petitioner's objections to the Findings and Recommendation suggest that he also objects to the "juror interview denial." Pet.'s Objs. at 1. Thus, that matter is now before me pursuant to Federal Rule of Civil Procedure 72(a).

In accordance with Rule 72(a), "[w]hen a pretrial matter not dispositive of a party's claim or defense is referred to a magistrate judge to hear and decide, the magistrate judge must promptly conduct the required proceedings and, when appropriate, issue a written order stating the decision." Fed. R. Civ. P. 72(a). The standard of review for an order with objections is "clearly erroneous" or "contrary to law." 28 U.S.C. § 636(b)(1)(A) (applying the "clearly erroneous or contrary to law" standard of review for nondispositive motions). If a ruling on a motion is not determinative of "a party's claim or defense," it is not dispositive and, therefore, is not subject to *de novo* review as are proposed findings and recommendations for dispositive motions under 28 U.S.C. § 636(b)(1)(B).

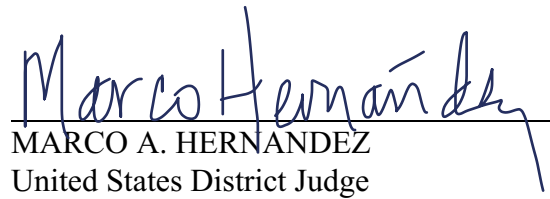
I have carefully considered petitioner's objections and conclude they do not provide a basis to modify the Magistrate Judge's Order.

CONCLUSION

The Court ADOPTS Magistrate Judge Acosta's Findings and Recommendation [#87] and therefore, petitioner's Second Amended Petition for Writ of Habeas Corpus [55] is denied.

IT IS SO ORDERED.

DATED this 24 day of Mar, 2012.

  
MARCO A. HERNANDEZ  
United States District Judge